

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
NORTHWESTERN DIVISION**

Phoenix Energy, Inc.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 4:13-cv-090
	)	
Breitling Royalties Corporation,	)	
	)	
Defendant.	)	

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**DEFENDANT’S MOTION TO DISMISS**

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Defendant Breitling Royalties Corporation (hereinafter “Breitling” or “Defendant”) hereby files its Motion to Dismiss (“Motion”) as follows:

1. Pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, Defendant Breitling Royalties Corporation (hereinafter “Breitling” or “Defendant”) moves to dismiss all claims asserted by Plaintiff Phoenix Energy, Inc.’s (“Phoenix” or “Plaintiff”) as neither declaratory judgment nor reformation is appropriate in this matter.

2. Plaintiff’s causes of action are seeking a declaratory judgment to interpret whether a contract between the Parties was breached and reformation of an assignment. Plaintiff’s requests for declaratory relief and reformation fail to state a claim upon which relief may be granted because there is no legal dispute in Plaintiff’s claim. The questions raised in this matter are purely factual considerations to be resolved by the finders of fact. These include whether Phoenix made representations and induced Breitling to enter into the agreement, and the ultimate value of the losses sustained by Breitling. Such questions are not appropriate for declaratory relief, but are best reserved for the finder of fact.

3. Even if this Court determined that a legal dispute exists, it must still consider whether or not declaratory relief would be an appropriate exercise of its discretion. 28 U.S.C. §2201(a) (the Court “may declare the rights and other legal relations of any interested party seeking such declaration”). A Texas State Court case concerning the same Parties, facts and cause of action, has been pending since September 26, 2012. Declaratory judgment is typically not available to resolve state-law issues already pending before a state court. If the state court case involves a state-law claim, the presumption is that the case should be tried in state court. Breitling’s claims concern no compelling federal interests.

4. Declaratory relief is not appropriate when such a ruling would neither serve a useful purpose nor terminate the dispute between the parties. Breitling has brought claims not only for breach of contract, but for fraudulent inducement, fraud by nondisclosure, and statutory fraud. All these claims are better suited to be tried in Texas State Court and finality of these issues would not be resolved by the breach of contract claim in Plaintiff’s complaint. Thus, Plaintiff’s declaratory relief claim would not resolve this matter entirely, and would only promote the type of piecemeal litigation consistently rejected by Federal Courts.

5. Because reformation requires a determination of the purely factual disputes in this matter, and such factual disputes are reserved for the finders-of-fact, this Court cannot reform the assignment. Furthermore, Phoenix’s request for reformation will not resolve Breitling’s additional claims for fraudulent inducement, fraud by nondisclosure, and statutory fraud, and thus highlights the importance of the pending Texas State Court suit.

Wherefore, premises considered, Breitling respectfully requests that the Court: (1) grant Defendant's Motion to Dismiss; (2) dismiss with prejudice Plaintiff's claims for declaratory relief; (3) dismiss with prejudice Plaintiff's claims for reformation; and (4) grant Breitling such other relief, at law or in equity, to which it may be justly entitled.

Respectfully submitted this 3rd day of March, 2014.

/s/ Larry L. Boschee

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**ROYALTIES CORPORATION**

**CERTIFICATE OF CONFERENCE**

On March 3, 2014 the undersigned conferenced with Phoenix's counsel and was unable to agree to a Stipulation of Dismissal at this time. Accordingly the Motion is being submitted to the Court.

/s/ Larry L. Boschee

**CERTIFICATE OF SERVICE**

I certify that on the 3rd day of March, 2014, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF System which will send electronic notification of such filing to counsel.

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/s/ Larry L. Boschee

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